TRUSTS — DEPOSIT OF CHECK FOR COLLECTION — LIABILITY OF BANK. — The plaintiff deposited for collection with the defendant bank a check on another bank against which the defendant allowed him to draw. The check was lost in the clearing house before collection. *Held*, that the defendant is liable as debtor for the amount of the check. *Walton* v. *Riverside Bank*, 60 N. Y. Supp. 519 (Supp. Ct., App. Term).

When negotiable paper is deposited with a bank for collection the bank is regarded by the great weight of authority as a mere agent, and does not become a debtor till the paper is paid. *Scott* v. *Ocean Bank*, 23 N. Y. 289; *Phœnix Bank* v. *Risley*, 111 U. S. 125. It does not seem that the additional fact in the principal case, where the depositor was allowed to draw against the check before collection, should alter the relation of the parties. Such a permission is extended as a courtesy, and the transaction really amounts to a loan by the bank on the security of the check. The authorities, however, are about equally divided. In agreement with this line of reasoning is *Balbach* v. *Frelinghuysen*, 15 Fed. Rep. 675 (Cir. Ct., N. J.). *Contra*, *Hoffman* v. *First National Bank*, 46 N. J. Law, 604. The view in the principal case results in making the defendant a guarantor not only of the safety of the check while in his possession or that of his agents, but also of its collectibility. Such an extreme liability should hardly in reason be imposed as a result of the nature of the transaction. *Gaden* v. *New Foundland Savings Bank*, [1899] App. Cas. 280; *Moors* v. *Goddard*, 147 Mass. 287.

REVIEWS.

A TREATISE ON CRIMINAL PLEADING AND PRACTICE. By Joseph Henry Beale, Jr. Boston: Little, Brown & Co. 1899. pp. xli, 400.

This latest addition to the Student Series is, as most of the preceding volumes have been, a practical book in the best sense of the word, both for the student and the practitioner. Leaving to one side the minor details of practice that depend solely on local arrangements, the book deals with the general principles of modern criminal pleading. While the book is thus devoted to a statement of the law as it is to-day, it is more than a mere annotated digest. When the point of law under discussion is clear as to its underlying principles, the illustrations and variants are stated in as concise a form as possible. Where, on the other hand, the principle is not clear, or there is a conflict in the decisions, the reason for the law, or an intimation as to which of the decisions is the sounder, is given with sufficient fulness to set the reader on the right track. Thus in the chapter on Burden of Proof the distinction is made clear between insanity, which is really a negative defence and hence one that does not shift the burden of establishing to the defendant, and a truly affirmative plea as self-defence or former jeopardy, where the burden should so shift. While the correctness on principle of these views is shown, it is also pointed out that in the case of insanity the courts are almost evenly divided, and in the case of self-defence they are almost unanimous in keeping the burden on the prosecution. Throughout the treatise citations, while rarely merely cumulative, are always given for every statement of law, and chosen from the whole field of both English and American decisions.

The subject-matter is divided into four parts with appropriate chapters. Starting with the first question that would naturally arise, that of jurisdiction and venue, the author proceeds through the various steps of the accusation and trial to the question of pardon and other bars to execution. Not the least interesting part of the work is that which discusses the present forms of indictment. Professor Beale points out that the reason for the present cumbersome and wordy forms is in large part historical, that the really necessary parts of the indictment, even when the need for

preserving to the accused the rights given him by the Constitution is considered, are comparatively few. The simpler forms that will sooner or later supersede in all States the present archaic ones are illustrated by reference to the revised indictments already in use in New York and Massachusetts. H. A. B.

LE POUVOIR EXÉCUTIF AUX ETATS-UNIS. Par M. Adolphe de Chambrun. Revue, corrigée et augmentée avec préface de M. Pierre de Chambrun. Paris: A. Fontemoing, Éditeur. 1899. pp. xvi, 337.

This extensive monograph was first published in 1873 — about the time of the Third Republic in France — with the intention of familiarizing the French people with the system of the American executive. It is then essentially an exposition and only secondarily a critical study of our government. It has been little known in the United States, and the present re-edition is practically a re-introduction of the book. It is on the whole a sound exposition of the subject — careful, minute and admirably clear, full of historical explanation. In only one place, in regard to the function of the judicial power to adjudge legislation unconstitutional, is positive error noticed. The defects of the book are the seemingly almost insuperable ones which beset a continental writer who deals with the American or English systems of government. The author shows a constant tendency to attribute the form of the executive power far too much to abstractly rational ideas, to reduce to formulæ, to "neglect what he cannot express neatly," — or from the other aspect, he failed to comprehend completely the flexibility of our institutions, he put too little emphasis on the growth of the power of the central government and felt too little the power of the states; his system of checks balances over nicely, he missed the rough-hewn, elastic quality of the system.

Another Frenchman writing a few years later, Boutmy in his "Études de Droit Constitutionnel," pointed out most acutely the often illogical and seemingly unworkable nature of parts of our system, but he appreciated another fact, that these clumsy parts of our machinery were often perfectly serviceable. It is just that sort of thing that Chambrun failed to do, and on the whole his book teaches us little. Yet in this very abstract rationalism the author gained at least one thing, — an uncommon conception of the immense scope of the executive power. His chapter on the transformation of that power during the administration of Lincoln is, to the ordinary American, most interesting. And the last chapter, where he predicts that in case the United States acquire new territory inhabited by races different from her own, the power of the executive will be wonderfully augmented, has been proven by recent events.

J. P. C. JR.

BILLS OF EXCHANGE, PROMISSORY NOTES, BANK-NOTES AND CHEQUES. By Sir John Barnard Byles. Sixteenth Edition. By Maurice Barnard Byles and Walter John Barnard Byles. London: Sweet & Maxwell, Lim. 1899. pp. lxx, 582.

The leading, though not the earliest, English text book on the law of Bills and Notes has passed into its sixteenth edition. It is difficult to recognize full grown in the present stout volume the modest little original published in 1829. That first edition did not aim to compete with the earlier works of Bayley and of Chitty, first published in 1789 and 1799 respectively, but supplied the long-felt want of a brief summary of the